

AMENDED IN ASSEMBLY APRIL 30, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 886**

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**Introduced by Assembly Member Sharon Runner**

February 22, 2007

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An act to amend Sections 1185 and 1189 of the Civil Code, and to amend Sections 6203, 8201.1, 8202, 8206, 8213.5, 8213.6, 8214.1, 8214.15, 8214.2, 8221, 8225, 8228, and 8228.1 of, and to add Sections 8214.21, 8214.22, and 8214.23 to, the Government Code, relating to notaries.

### LEGISLATIVE COUNSEL'S DIGEST

AB 886, as amended, Sharon Runner. Notaries.

Existing law requires a notary public to keep one active sequential journal of all official acts and requires that the journal include copies of notarized documents and, in connection with the signing of a deed, quitclaim deed, or deed of trust affecting real property, a thumbprint of the signing party.

This bill would apply the thumbprint requirement in connection with all notarized documents. It would provide that nothing in provisions of law governing notaries shall be construed to limit the authority of a peace officer to seize a notary's journal as evidence of a crime.

Existing law requires a notary public, when executing various documents, to determine from personal knowledge or satisfactory evidence, the existence of certain facts or identities, as specified.

This bill would instead require that this determination be from satisfactory evidence and would make conforming changes.

Existing law requires a notary public to notify the Secretary of State of any change in the location or address of the principal place of business or of any name change.

This bill would prohibit a notary from using a commercial mail receiving agency or post office as his or her principal place of business or residence. It would make willful failure to notify the secretary of a change of address or name to be punishable as an infraction by a fine of not more than \$500.

Existing law authorizes the Secretary of State to refuse to appoint any person as notary public or to revoke or suspend the commission of any notary public upon specified grounds. Existing law also makes specified violations by a notary public punishable by a civil penalty not to exceed \$750 or \$1,000.

This bill would recast the provisions under which the secretary may, and specify provisions under which the secretary shall, refuse to appoint any person as notary public. It would make conforming changes to the fine provisions and provide that a notary public is guilty of a misdemeanor if he or she willfully fails to provide access to the journal when requested by a peace officer, willfully fails to disclose the receipt of notice of revocation as specified, or fails to obtain a thumbprint from a party signing a document.

Existing law authorizes the Secretary of State to enforce provisions of law governing notaries.

This bill would authorize peace officers to also enforce these provisions.

By expanding the definition of crimes, this bill would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1185 of the Civil Code is amended to  
2 read:

1 1185. (a) The acknowledgment of an instrument shall not be  
2 taken unless the officer taking it has satisfactory evidence that the  
3 person making the acknowledgment is, the individual who is  
4 described in and who executed the instrument.

5 (b) For the purposes of this section “satisfactory evidence”  
6 means the absence of any information, evidence, or other  
7 circumstances which would lead a reasonable person to believe  
8 that the person making the acknowledgment is not the individual  
9 he or she claims to be and any one of the following:

10 (1) The oath or affirmation of a credible witness personally  
11 known to the officer that the person making the acknowledgment  
12 is personally known to the witness and that each of the following  
13 are true:

14 (A) The person making the acknowledgment is the person named  
15 in the document.

16 (B) The person making the acknowledgment is personally known  
17 to the witness.

18 (C) That it is the reasonable belief of the witness that the  
19 circumstances of the person making the acknowledgment are such  
20 that it would be very difficult or impossible for that person to  
21 obtain another form of identification.

22 (D) The person making the acknowledgment does not possess  
23 any of the identification documents named in paragraphs (3) and  
24 (4).

25 (E) The witness does not have a financial interest in the  
26 document being acknowledged and is not named in the document.

27 (2) The oath or affirmation under penalty of perjury of two  
28 credible witnesses, whose identities are proven to the officer upon  
29 the presentation of satisfactory evidence, that each statement in  
30 paragraph (1) of this subdivision is true.

31 (3) Reasonable reliance on the presentation to the officer of any  
32 one of the following, if the document is current or has been issued  
33 within five years:

34 (A) An identification card or driver’s license issued by the  
35 California Department of Motor Vehicles.

36 (B) A passport issued by the Department of State of the United  
37 States.

38 (4) Reasonable reliance on the presentation of any one of the  
39 following, provided that a document specified in subparagraphs

40 (A) to (E), inclusive, shall either be current or have been issued

1 within five years and shall contain a photograph and description  
2 of the person named on it, shall be signed by the person, shall bear  
3 a serial or other identifying number, and, in the event that the  
4 document is a passport, shall have been stamped by the United  
5 States Immigration and Naturalization Service:

6 (A) A passport issued by a foreign government.

7 (B) A driver's license issued by a state other than California or  
8 by a Canadian or Mexican public agency authorized to issue  
9 drivers' licenses.

10 (C) An identification card issued by a state other than California.

11 (D) An identification card issued by any branch of the armed  
12 forces of the United States.

13 (E) An inmate identification card issued on or after January 1,  
14 1988, by the Department of Corrections, if the inmate is in custody.

15 (F) An inmate identification card issued prior to January 1,  
16 1988, by the Department of Corrections, if the inmate is in custody.

17 (c) An officer who has taken an acknowledgment pursuant to  
18 this section shall be presumed to have operated in accordance with  
19 the provisions of law.

20 (d) Any party who files an action for damages based on the  
21 failure of the officer to establish the proper identity of the person  
22 making the acknowledgment shall have the burden of proof in  
23 establishing the negligence or misconduct of the officer.

24 (e) Any person convicted of perjury under this section shall  
25 forfeit any financial interest in the document.

26 SEC. 2. Section 1189 of the Civil Code is amended to read:

27 1189. (a) Any certificate of acknowledgment taken within this  
28 state shall be in the following form:

29  
30 State of California                    )  
31 County of \_\_\_\_\_ )

32  
33 On \_\_\_\_\_ before me,  
34 ( h e r e    i n s e r t    n a m e    a n d    t i t l e    o f    t h e

35  
36 officer), personally appeared \_\_\_\_\_,

37 or proved to me on the basis of

38 satisfactory evidence to be the person(s) whose name(s) is/are

39 subscribed to the within instrument and acknowledged to me that

40 he/she/they executed the same in his/her/their authorized

1 capacity(ies), and that by his/her/their signature(s) on the  
2 instrument the person(s), or the entity upon behalf of which the  
3 person(s) acted, executed the instrument.

4  
5 I certify under PENALTY OF PERJURY under the laws of the State of  
6 California that the foregoing paragraph is true and correct.

7  
8 WITNESS my hand and official seal.

9  
10 Signature \_\_\_\_\_ (Seal)

11  
12 (b) Any certificate of acknowledgment taken in another place  
13 shall be sufficient in this state if it is taken in accordance with the  
14 laws of the place where the acknowledgment is made.

15 (c) On documents to be filed in another state or jurisdiction of  
16 the United States, a California notary public may complete any  
17 acknowledgment form as may be required in that other state or  
18 jurisdiction on a document, provided the form does not require the  
19 notary to determine or certify that the signer holds a particular  
20 representative capacity or to make other determinations and  
21 certifications not allowed by California law.

22 (d) An acknowledgment provided prior to January 1, 1993, and  
23 conforming to applicable provisions of former Sections 1189,  
24 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335  
25 of the Statutes of 1990, shall have the same force and effect as if  
26 those sections had not been repealed.

27 SEC. 3. Section 6203 of the Government Code is amended to  
28 read:

29 6203. (a) Every officer authorized by law to make or give any  
30 certificate or other writing is guilty of a misdemeanor if he makes  
31 and delivers as true any certificate or writing containing statements  
32 which he knows to be false.

33 (b) Notwithstanding any other limitation of time described in  
34 Penal Code Section 802, or any other provision of law, prosecution  
35 for a violation of this offense shall be commenced within four  
36 years after discovery of the commission of the offense, or within  
37 four years after the completion of the offense, whichever is later.

38 (c) The penalty provided by this section is not an exclusive  
39 remedy, and does not affect any other relief or remedy provided  
40 by law.

SEC. 4. Section 8201.1 of the Government Code is amended to read:

8201.1. Prior to granting an appointment as a notary public, the Secretary of State shall determine that the applicant possesses the required honesty, credibility, truthfulness, and integrity to fulfill the responsibilities of the position. To assist in determining the identity of the applicant and whether the applicant has been convicted of a disqualifying crime specified in subdivisions (a) and (b) of Section 8214.1, the Secretary of State shall require that applicants be fingerprinted.

SEC. 5. Section 8202 of the Government Code is amended to read:

8202. (a) When executing a jurat, a notary shall administer an oath or affirmation to the affiant and shall determine, from satisfactory evidence as described in Section 1185 of the Civil Code, that the affiant is the person executing the document. The affiant shall sign the document in the presence of the notary.

(b) To any affidavit subscribed and sworn to before a notary, there shall be attached a jurat in the following form:

State of California

County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Seal \_\_\_\_\_

Signature \_\_\_\_\_

SEC. 6. Section 8206 of the Government Code is amended to read:

8206. (a) (1) A notary public shall keep one active sequential journal at a time, of all official acts performed as a notary public. The journal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the journal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.

1 (2) The journal shall be in addition to and apart from any copies  
2 of notarized documents that may be in the possession of the notary  
3 public and shall include all of the following:

4 (A) Date, time, and type of each official act.

5 (B) Character of every instrument sworn to, affirmed,  
6 acknowledged, or proved before the notary.

7 (C) The signature of each person whose signature is being  
8 notarized.

9 (D) A statement as to whether the identity of a person making  
10 an acknowledgment or taking an oath or affirmation was based on  
11 satisfactory evidence. If identity was established by satisfactory  
12 evidence pursuant to Section 1185 of the Civil Code, then the  
13 journal shall contain the signature of the credible witness swearing  
14 or affirming to the identity of the individual or the type of  
15 identifying document, the governmental agency issuing the  
16 document, the serial or identifying number of the document, and  
17 the date of issue or expiration of the document.

18 (E) If the identity of the person making the acknowledgment or  
19 taking the oath or affirmation was established by the oaths or  
20 affirmations of two credible witnesses whose identities are proven  
21 upon the presentation of satisfactory evidence, the type of  
22 identifying documents, the identifying numbers of the documents  
23 and the dates of issuance or expiration of the documents presented  
24 by the witnesses to establish their identity.

25 (F) The fee charged for the notarial service.

26 (G) The notary public shall require the party signing the  
27 document to place his or her right thumbprint in the journal. If the  
28 right thumbprint is not available, then the notary shall have the  
29 party use his or her left thumb, or any available finger and shall  
30 so indicate in the journal. If the party signing the document is  
31 physically unable to provide a thumbprint or fingerprint, the notary  
32 shall so indicate in the journal and shall also provide an explanation  
33 of that physical condition. This paragraph shall not apply to a  
34 trustee's deed resulting from a decree of foreclosure or a  
35 nonjudicial foreclosure pursuant to Section 2924 of the Civil Code,  
36 nor to a deed of reconveyance.

37 (b) If a sequential journal of official acts performed by a notary  
38 public is stolen, lost, misplaced, destroyed, damaged, or otherwise  
39 rendered unusable as a record of notarial acts and information, the  
40 notary public shall immediately notify the Secretary of State by

1 certified or registered mail. The notification shall include the period  
2 of the journal entries, the notary public commission number, and  
3 the expiration date of the commission, and when applicable, a  
4 photocopy of any police report that specifies the theft of the  
5 sequential journal of official acts.

6 (c) Upon written request of any member of the public, which  
7 request shall include the name of the parties, the type of document,  
8 and the month and year in which notarized, the notary shall supply  
9 a photostatic copy of the line item representing the requested  
10 transaction at a cost of not more than thirty cents (\$0.30) per page.

11 (d) The journal of notarial acts of a notary public is the exclusive  
12 property of that notary public, and shall not be surrendered to an  
13 employer upon termination of employment, whether or not the  
14 employer paid for the journal, or at any other time. The notary  
15 public shall not surrender the journal to any other person, except  
16 the county clerk, pursuant to Section 8209, or immediately upon  
17 request to a peace officer, as defined in Sections 830.1, 830.2, and  
18 830.3 of the Penal Code, acting in his or her official capacity and  
19 within his or her authority. The notary public shall obtain a receipt  
20 for the journal, and shall notify the Secretary of State by certified  
21 mail within 10 days that the journal was relinquished to a peace  
22 officer. The notification shall include the period of the journal  
23 entries, the commission number of the notary public, the expiration  
24 date of the commission, and a photocopy of the receipt. The notary  
25 public shall obtain a new sequential journal. If the journal  
26 relinquished to a peace officer is returned to the notary public and  
27 a new journal has been obtained, the notary public shall make no  
28 new entries in the returned journal. A notary public who is an  
29 employee shall permit inspection and copying of journal  
30 transactions by a duly designated auditor or agent of the notary  
31 public's employer, provided that the inspection and copying is  
32 done in the presence of the notary public and the transactions are  
33 directly associated with the business purposes of the employer.  
34 The notary public, upon the request of the employer, shall regularly  
35 provide copies of all transactions that are directly associated with  
36 the business purposes of the employer, but shall not be required  
37 to provide copies of any transaction that is unrelated to the  
38 employer's business. Confidentiality and safekeeping of any copies  
39 of the journal provided to the employer shall be the responsibility  
40 of that employer.



1 (e) The notary public shall provide the journal for examination  
2 and copying in the presence of the notary public upon receipt of  
3 a subpoena duces tecum or a court order, and shall certify those  
4 copies if requested.

5 (f) Nothing in this chapter shall be construed to limit the  
6 authority of a peace officer to seize a sequential journal of notarial  
7 acts as evidence of a crime under the laws of California and the  
8 United States.

9 SEC. 7. Section 8213.5 of the Government Code is amended  
10 to read:

11 8213.5. A notary public shall notify the Secretary of State by  
12 certified mail within 30 days as to any change in the location or  
13 address of the principal place of business or residence. A notary  
14 public shall not use a commercial mail receiving agency or post  
15 office box as his principal place of business or residence. Willful  
16 failure to notify the Secretary of State of a change of address shall  
17 be punishable as an infraction by a fine of not more than five  
18 hundred dollars (\$500).

19 SEC. 8. Section 8213.6 of the Government Code is amended  
20 to read:

21 8213.6. If a notary public changes his or her name, the notary  
22 public shall complete an application for name change form and  
23 file that application with the Secretary of State. Information on  
24 this form shall be subject to the confidentiality provisions described  
25 in Section 8201.5. Upon approval of the name change form, the  
26 Secretary of State shall issue a commission that reflects the new  
27 name of the notary public. The term of the commission and  
28 commission number shall remain the same. Willful failure to notify  
29 the Secretary of State of a name change shall be punishable as an  
30 infraction by a fine of not more than five hundred dollars (\$500).

31 SEC. 9. Section 8214.1 of the Government Code is amended  
32 to read:

33 8214.1. (a) The Secretary of State may refuse to appoint any  
34 person as notary public or may revoke or suspend the commission  
35 of any notary public upon any of the following grounds:

36 (1) Failure to discharge fully and faithfully any of the duties or  
37 responsibilities required of a notary public.

38 (2) When adjudged liable for damages in any suit grounded in  
39 fraud, misrepresentation, or violation of the state regulatory laws

1 or in any suit based upon a failure to discharge fully and faithfully  
2 the duties as a notary public.

3 (3) The use of false or misleading advertising wherein the notary  
4 public has represented that the notary public has duties, rights, or  
5 privileges that he or she does not possess by law.

6 (4) The practice of law in violation of Section 6125 of the  
7 Business and Professions Code.

8 (5) Charging more than the fees prescribed by this chapter.

9 (6) Failure to complete the acknowledgment at the time the  
10 notary's signature and seal are affixed to the document.

11 (7) Failure to administer the oath or affirmation as required by  
12 paragraph (3) of subdivision (a) of Section 8205.

13 (8) Execution of any certificate as a notary public containing a  
14 statement known to the notary public to be false.

15 (9) Violation of Section 8223.

16 (10) Failure to submit any remittance payable upon demand by  
17 the Secretary of State under this chapter or failure to satisfy any  
18 court-ordered money judgment, including restitution.

19 (11) Failure to secure the sequential journal of official acts,  
20 pursuant to Section 8206, or the official stamp or seal, pursuant  
21 to Section 8207.

22 (12) Violation of Section 8219.5.

23 (b) The Secretary of State shall refuse to appoint any person as  
24 notary public or shall revoke the commission of any notary public  
25 upon any of the following grounds:

26 (1) Substantial and material misstatement or omission in the  
27 application submitted to the Secretary of State.

28 (2) Commission of any willful act involving dishonesty, fraud,  
29 or deceit.

30 (3) Commission of an act in violation of Section 6203, 8214.2,  
31 8225, 8227.1, or 8227.3 of the Government Code or of Section  
32 115, 470, 487, or 530.5 of the Penal Code.

33 (4) Conviction of ~~a felony, a lesser offense involving moral~~  
34 ~~turpitude, or a lesser~~ *any crime of moral turpitude or an offense* of  
35 a nature incompatible with the duties of a notary public. A  
36 conviction after a plea of nolo contendere is deemed to be a  
37 conviction within the meaning of this subdivision.

38 (5) Revocation, suspension, restriction, or denial of a  
39 professional license, if the revocation, suspension, restriction, or  
40 denial was for misconduct for dishonesty, or for any cause

1 substantially relating to the duties or responsibilities of a notary  
2 public.

3 (6) Willful failure to discharge fully and faithfully any of the  
4 duties or responsibilities required of a notary public.

5 (7) Willful failure to complete the acknowledgment at the time  
6 the notary's signature and seal are affixed to the document.

7 (8) Willful failure to provide access to the sequential journal of  
8 official acts upon request by a peace officer.

9 (9) Willful failure to secure the sequential journal of official  
10 acts, pursuant to Section 8206, or the official stamp and seal,  
11 pursuant to Section 8207, or willful failure to report the theft or  
12 loss of the sequential journal, pursuant to subdivision (b) of Section  
13 8206.

14 SEC. 10. Section 8214.2 of the Government Code is amended  
15 to read:

16 8214.2. (a) A notary public who knowingly and willfully with  
17 intent to defraud performs any notarial act in relation to a deed of  
18 trust on real property consisting of a single-family residence  
19 containing not more than four dwelling units, with knowledge that  
20 the deed of trust contains any false statements or is forged in whole  
21 or in part, is guilty of a felony.

22 (b) The penalty provided by this section is not an exclusive  
23 remedy and does not affect any other relief or remedy provided  
24 by law.

25 SEC. 11. Section 8214.15 of the Government Code is amended  
26 to read:

27 8214.15. (a) In addition to any commissioning or disciplinary  
28 sanction, a violation of paragraph (3) or (8) of subdivision (a) ~~of~~,  
29 ~~or~~, *or a violation of* subdivision (b) of Section 8214.1, is punishable  
30 by a civil penalty not to exceed one thousand five hundred dollars  
31 (\$1,500).

32 (b) In addition to any commissioning or disciplinary sanction,  
33 a violation of paragraphs (5), (6) and (7) of subdivision (a) of  
34 Section 8214.1, or a negligent violation of paragraph (1) ~~or~~ *of*  
35 subdivision (a) of Section 8214.1, is punishable by a civil penalty  
36 not to exceed seven hundred fifty dollars (\$750).

37 (c) The civil penalty may be imposed by the Secretary of State  
38 if a hearing is not requested pursuant to Section 8214.3. If a hearing  
39 is requested, the hearing officer shall make the determination.

(d) Any civil penalties collected pursuant to this section shall be transferred to the General Fund. It is the intent of the Legislature that to the extent General Fund moneys are raised by penalties collected pursuant to this section, that money shall be made available to the Secretary of State's office to defray its costs of investigating and pursuing commissioning and monetary remedies for violations of the notary public law.

SEC. 12. Section 8214.21 is added to the Government Code, to read:

8214.21. A notary public who willfully fails to provide access to the sequential journal of notarial acts when requested by a peace officer is guilty of a misdemeanor.

SEC. 13. Section 8214.22 is added to the Government Code, to read:

8214.22. A notary public, who has been served with notice of revocation by the Secretary of State or a peace officer, must disclose this information to any person requesting notarial services prior to performing an official act. A notary public who willfully fails to make this disclosure is guilty of a misdemeanor.

SEC. 14. Section 8214.23 is added to the Government Code, to read:

8214.23. (a) A notary public who fails to obtain a thumbprint from a party signing a document is guilty of a misdemeanor.

(b) Notwithstanding any other limitation of time described in Section 802 of the Penal Code, or any other provision of law, prosecution for a violation of this offense shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.

SEC. 15. Section 8221 of the Government Code is amended to read:

8221. (a) If any person shall knowingly destroy, deface, or conceal any records or papers belonging to the office of a notary public, such person shall be guilty of a misdemeanor and be liable in a civil action for damages to any person injured as a result of such destruction, defacing, or concealment.

(b) Notwithstanding any other limitation of time described in Section 802 of the Penal Code, or any other provision of law, prosecution for a violation of this offense shall be commenced within four years after discovery of the commission of the offense,

1 or within four years after the completion of the offense, whichever  
2 is later.

3 (c) The penalty provided by this section is not an exclusive  
4 remedy and does not affect any other relief or remedy provided  
5 by law.

6 SEC. 16. Section 8225 of the Government Code is amended  
7 to read:

8 8225. (a) Any person who solicits, coerces, or in any manner  
9 influences a notary public to perform an improper notarial act  
10 knowing that act to be an improper notarial act, including any act  
11 required of a notary public under Section 8206, shall be guilty of  
12 a misdemeanor.

13 (b) Notwithstanding any other limitation of time described in  
14 Section 802 of the Penal Code, or any other provision of law,  
15 prosecution for a violation of this offense shall be commenced  
16 within four years after discovery of the commission of the offense,  
17 or within four years after the completion of the offense, whichever  
18 is later.

19 (c) The penalty provided by this section is not an exclusive  
20 remedy, and does not affect any other relief or remedy provided  
21 by law.

22 SEC. 17. Section 8228 of the Government Code is amended  
23 to read:

24 8228. The Secretary of State or a peace officer, as defined in  
25 Sections 830.1, 830.2, and 830.3 of the Penal Code, acting in his  
26 or her official capacity and within his or her authority, may enforce  
27 the provisions of this chapter through the examination of a notary  
28 public's books, records, letters, contracts, and other pertinent  
29 documents relating to the official acts of the notary public.

30 SEC. 18. Section 8228.1 of the Government Code is amended  
31 to read:

32 8228.1. (a) Any notary public who willfully fails to perform  
33 any duty required of a notary public under Section 8206, or who  
34 willfully fails to keep the seal of the notary public under the direct  
35 and exclusive control of the notary public, or who surrenders the  
36 seal of the notary public to any person not otherwise authorized  
37 by law to possess the seal of the notary, shall be guilty of a  
38 misdemeanor.

39 (b) Notwithstanding any other limitation of time described in  
40 Section 802 of the Penal Code or any other provision of law,

1 prosecution for a violation of this offense shall be commenced  
2 within four years after discovery of the commission of the offense,  
3 or within four years after the completion of the offense, whichever  
4 is later.

5 (c) The penalty provided by this section is not an exclusive  
6 remedy, and does not affect any other relief or remedy provided  
7 by law.

8 SEC. 19. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.